

IN THE CIRCUIT COURT OF THE 17<sup>th</sup> TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

IN RE: THE MARRIAGE OF

CHRISTINA NOVESHEN,  
n/k/a CHRISTINA CARTER,

Petitioner/Former Wife,

and

ERIC NOVESHEN,

Respondent/Former Husband.

CASE NO. FMCE 03-18306 (35/90)

FAMILY DIVISION

Judgment

**ORDER ON THE LAW FIRM OF BARRY S. FRANKLIN & ASSOCIATES, P.A.'S MOTION FOR CONTEMPT AND TO TAX ADDITIONAL FEES AND COSTS AGAINST ERIC NOVESHEN, PRO SE and MONEY FINAL JUDGMENT ENTERED IN FAVOR OF THE LAW FIRM OF BARRY S. FRANKLIN & ASSOCIATES, P.A. AND AGAINST ERIC NOVESHEN**

THIS CAUSE came before the Court on Tuesday, June 21, 2011 at 2:50 p.m. on the Law Firm of Barry S. Franklin & Associates, P.A.'s motion entitled "The Law Firm of Barry S. Franklin & Associates, P.A.'s Motion for Contempt and to Tax Additional Fees and Costs against ERIC NOVESHEN, *pro se*." Present for the hearing were Barry S. Franklin of the Law Firm of Barry S. Franklin & Associates, P.A. and ERIC NOVESHEN, *pro se*. Based upon the evidence presented and after hearing legal argument of counsel and ERIC NOVESHEN, *pro se*, the Court makes the following Findings of Fact, Conclusions of Law and Adjudications:

1. The Court has continuing jurisdiction over the subject matter and the parties with respect to this matter.

2. By Order dated March 9, 2011, ERIC NOVESHEN was obligated to pay \$2,425.00 directly to the Law Firm of Barry S. Franklin & Associates, P.A. on or before April 15, 2011.

3. ERIC NOVESHEN did not pay the Law Firm of Barry S. Franklin & Associates, P.A. in compliance with the aforementioned Court order nor did he make any partial payments with respect thereto.

4. ~~It is undisputed~~ That there has been a history of noncompliance on the part of ERIC NOVESHEN with respect to making timely payments to the Law Firm of Barry S. Franklin & Associates, P.A. as required by the Agreed Order Confirming Parties' Settlement on Former Wife's Pending Fee Claims and Court's Ratification of Settlement Agreement Resolving Outstanding Attorney's Fees Issues and Claims. By ERIC NOVESHEN's own admission, his payments were late and payments made by check bounced on several occasions.

5. The Court rejects ERIC NOVESHEN's argument or his so-called defense that he should be relieved of his obligation to the Law Firm of Barry S. Franklin & Associates, P.A. as set forth in the March 9, 2011 Order because he claims that he did not timely receive a copy of the written court order. The Court expressly announced its findings and rulings in open court on March 1, 2011 while ERIC NOVESHEN was present in court to hear the rulings and which were precisely confirmed in the written court order later entered on March 9, 2011.

6. The Law Firm of Barry S. Franklin & Associates, P.A.'s Motion for Contempt and to Tax Additional Fees and Costs against ERIC NOVESHEN, *pro se* shall be treated by the Court as an enforcement motion and in that regard it is GRANTED.

7. Because there was no showing at the hearing held on June 21, 2011 that ERIC NOVESHEN has the current ability to pay the amount that he owes in the nature of support, the contempt application as it relates to the sanction of incarceration is DENIED.

8. ERIC NOVESHEN's request to be able to pay what he owes on an installment basis is DENIED.

9. The entire principal amount previously due and owing to the Law Firm of Barry S. Franklin & Associates, P.A. of \$2,425.00 plus postjudgment interest at 6.0% per annum or .0001644 per day (statutory rate) remains due and owing by ERIC NOVESHEN and the Law Firm has the right to recover it from ERIC NOVESHEN as previously court ordered and reaffirmed herein.

10. In addition, ERIC NOVESHEN shall be responsible to pay the Law Firm of Barry S. Franklin & Associates, P.A. another two hours of the lawyer's time at the hourly rate of \$395.00 per hour for the sum of \$790.00.

11. Accordingly, ERIC NOVESHEN whose address is 508 Coconut Isle Drive, Fort Lauderdale, Florida 33301 shall pay to the Law Firm of Barry S. Franklin & Associates, P.A., 18851 N.E. 29<sup>th</sup> Avenue, Suite 410, Aventura, Florida 33180, the sum of \$3,242.91 plus all continuing post judgment interest on this amount until paid in full, for which let execution issue forthwith.

12. The Court reserves jurisdiction over the subject matter and the parties for purposes of further enforcement proceedings as may be deemed necessary.

~~DONE AND ORDERED~~ in Chambers in Broward County, Florida this \_\_\_\_\_ day of \_\_\_\_\_  
July 2011. ARTHUR M. BIRKEN

JUL 18 2011  
CIRCUIT COURT JUDGE  
A TRUE COPY

Copies Furnished to:

Barry S. Franklin, Esq., Harbour Centre - Suite 410, 11851 N.E. 191<sup>st</sup> St. Aventura, FL 33180  
Mr. Eric Noveshen, *pro se*, 508 Coconut Isle Drive, Fort Lauderdale, FL 33301

**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY,  
FLORIDA.**

<b>IN RE: THE FORMER MARRIAGE OF</b>	:	<b>CASE NO. 03-18306 (35) (90)</b>
	:	
<b>CHRISTINA NOVESHEN, n/k/a CHRISTINA CARTER</b>	:	<b>FAMILY DIVISION</b>
<b>Petitioner/Former Wife,</b>	:	
<b>vs.</b>	:	
	:	
<b>ERIC NOVESHEN,</b>	:	
<b>Respondent/Former Husband</b>	:	
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**FORMER HUSBAND'S MOTION FOR AN AWARD OF FEES AND  
SANCTIONS PURSUANT TO §57.105, FLA. STAT., AGAINST THE  
FORMER WIFE AND HER COUNSEL AND FOR OTHER RELIEF  
INCIDENT THERETO**

The Respondent/Former Husband, ERIC NOVESHEN, *Pro Se*, files his Motion for an Award of Fees and Sanctions Pursuant to §57.105, Fla.Stat., Against the Former Wife and Her Counsel and For Other Relief Incident Thereto, and states as follows:

**BACKGROUND**

1. These post judgment proceedings began when the Petitioner/Former Wife filed a motion for the imposition of sanctions against the Former Husband that were mostly denied and since, the Former Husband has sought modification to the Marital Settlement Agreement between the parties.
2. In any retaliatory move, the Former Wife has counter-petitioned for an increase in child support even though the Former Husband agreed to pay a higher amount of child support in the Marital Settlement Agreement than the child support guidelines would have required him to.
3. Throughout these proceedings the Former Wife, by and through her over litigious counsel Barry Franklin, Esq., has filed numerous frivolous motions for the sole purpose of harassing the Former Husband because of his simple desire to have a positive and supportive relationship between the minor child and himself.
4. Moreover, the Former Wife's counsel Barry Franklin, Esq., has continued to file

numerous frivolous motions for the sole purpose of harassing the Former Husband and running up additional fraudulent legal bills to attempt to tax the Former Husband for those charges.

### UNSUPPORTED CLAIMS

5. Once again in bad faith, the Former Wife's counsel Barry Franklin, Esq. filed his *The Law Offices of Barry S. Franklin & Associates, P.A. Motion for Post-Judgment Writ of Garnishment* with a certificate of service on March 5, 2014.

6. The Former Wife's counsel Barry Franklin, Esq. clearly seeks to mislead this Court to misapply case law that the Former Wife's counsel Barry Franklin, Esq. clearly knows and at the least should know, does not apply to the situation before this Court.

7. The Former Wife's counsel Barry Franklin, Esq. bases his motion upon "information and belief" which is clearly substandard for the imposition of a writ of garnishment.

8. The truth is that the Former Wife's counsel Barry Franklin, Esq. has no information to justify his nefarious motion and is negligent in not obtaining facts as a basis for filing his fishing expedition or so-called motion.

9. Specifically, Mr. Blume is not a tenant of the Former Husband as the Former Husband owns no real property.

10. As such, the Former Husband has never received any rent from Mr. Blume.

11. Furthermore, Mr. Blume is not indebted to the Former Husband.

12. Furthermore, Mr. Blume has no lease (the Former Husband owns no real property) nor oral contract (the Former Husband owns no real property) for tenancy for ~~any~~ *address* with the Former Husband.

13. Lastly, the Former Husband does not know Mr. Blume's whereabouts as Mr. Blume lives in Palm Beach County. The Former Wife's counsel Barry Franklin, Esq.'s aforementioned motion claims that Mr. Blume lives with the Former Husband.

### STANDARD FOR SANCTIONS

14. The Former Husband seeks sanctions against the Former Wife's counsel Barry Franklin, Esq. pursuant to §57.105, Fla. Stat., which allows for the recovery of attorney's fees and costs to be paid to the prevailing party by the losing party on any claim that the losing party knew or should have known that the claim:

- a. Was not supported by the material facts necessary to establish a claim or defense; or
- b. Would not be supported by the application of then existing law to support material facts.

15. As explained by the Fifth District Court of Appeal in *Albritton v. Ferrera*, 913 So. 2d 5 (Fla. 5<sup>th</sup> DCA 2005), the current version of the statute no longer requires a “complete absence of justiciable issue of law or fact”. Instead, the statute only requires that the “party or its counsel knew or should have known that the claim asserted was not supported by the facts or any application of the existing law”. Sanctions can be awarded even though it may not have been frivolous when filed. *Id.*

16. This Court may assess sanctions under §57.105, Fla. Stat. against a party who has asserted an unsupportable claim even though that party might ultimately prevail in the case on some other ground. *Barthlow v. Jett*, 900 So. 2d 739 (Fla. 1<sup>st</sup> DCA 2006) this Court is not required to measure damages from the date the motion for sanctions is filed, but is free to measure the attorney’s fees, costs and/or sanctions from the time it was known or should have been known that the claim had no basis in fact or law. *Yakavonis v. Dolphin Petroleum, Inc.*, 934 So. 2d 615, 619-20 (Fla. 4th DCA 2006).

17. The Former Wife’s counsel Barry Franklin, Esq.’s aforementioned motion is not supported by prevailing case law and was filed in bad faith for continued retaliation of his vexatious litigation against the Former Husband.

18. Even more egregious, is that the insistence by the Former Wife’s counsel Barry Franklin, Esq. for this Court to apply clearly erroneous case law for their own negligence and nefarious motives – to mislead this Court to tax the Former Husband for even more attorney’s fees that they knowingly he cannot afford to pay.

19. The Former Wife’s aforementioned motion is so devoid of merit so as to support an award of fees and/or sanctions pursuant to §57.105, Fla. Stat.

20. Pursuant to §57.105, Fla. Stat., the undersigned engaged in correspondence with Former Wife’s counsel and requested that they withdraw the Former Wife’s pleading within twenty-one days and the Former Wife has failed in refused to do so. A copy of that correspondence is attached hereto and incorporated here in as Exhibit “A”.

21. The Former Husband is entitled to an award of reasonable fees, costs, and/or sanctions pursuant to §57.105, Fla. Stat., and further, pursuant to §61.16, Fla.Stat.

22. Further, this Court should grant additional sanctions, fees and costs in the favor of the Former Husband based upon the Former Wife's counsel Barry Franklin, Esq. brought frivolous and misleading claims before this Court. See *Forum v. Boca Burger, Inc.*, 788 So. 2d 1055 (Fla. 4th DCA 2001)

23. §57.105, Fla. Stat. was enacted to deter practices and legal actions of the sort displayed here by the Former Wife's counsel Barry Franklin, Esq. Further, Florida Rule of Civil Procedure 1.010 imposes on parties and attorneys a duty to construe and apply the rules "to secure the just, speedy, and inexpensive determination of every action," as opposed to the unfair, dilatory, and legal fee-enhancing actions of the appellants in this case.

24. "Said another way, an attorney has a duty to refrain from advocacy, such as filing frivolous claims, which undermines or interferes with the functioning of the judicial system." *De Vaux v. Westwood Baptist Church*, 953 So. 2d 677, 684-85 (Fla. 1st DCA 2007).

25. Additionally, once this Court denies the Former Wife's counsel Barry Franklin, Esq.'s aforementioned motion, the Former Husband will be entitled to an award of fees and/or costs as the prevailing party pursuant to the applicable provision of the Marital Settlement Agreement between the parties.

**WHEREFORE**, the Respondent/Former Husband ERIC NOVESHEN, *Pro Se*, respectfully requests that this Honorable Court to enter an order granting the above-requested relief and any additional relief this Court deems necessary and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was sent via U.S. Mail on this 21<sup>st</sup> day of April, 2014 to: Barry Franklin, Esquire, 18851 NE 29<sup>th</sup> Avenue, Aventura, Florida 33180.

Eric Noveshen, *Pro Se*  
436 NE 10<sup>th</sup> Ave  
Fort Lauderdale, FL 33301  
Facsimile: (954) 337-7669  
ericno@comcast.net

  
BY: ERIC NOVESHEN

**Eric Noveshen**  
**436 NE 10<sup>th</sup> Ave**  
**Fort Lauderdale, FL 33301**  
**Fax (954) 337-7669**

March 11, 2014

Barry Franklin, Esq.  
18851 NE 29<sup>th</sup> Avenue  
Aventura, FL 33180

**RE: Writ of Garnishment**

Dear Mr. Franklin:

Enclosed herewith please find my Response and Motion for an Award of Fees and Sanctions as well as Fees and Sanction Pursuant to §57.105, Fla. Stat., Against the Former Wife' Counsel The Law Firm of Barry Fanklin Associates and For Other Relief Incident Thereto. Pursuant to §57.105, Fla. Stat., I hereby request that you withdraw your "*The Law Offices of Barry S. Frunklin & Associates, P.A. Motion for Post-Judgment Writ of Garnishment*" within twenty-one (21) days from the date hereof. If you fail to do so, I will file with the court the enclosed motion and at the trial in this cause I believe the court will award fees and sanctions in favor of myself on the basis of §57.105, Fla.Stat

**GOVERN YOURSELF ACCORDING**

Very truly yours,

  
Eric Noveshen

Enclosure

Exhibit "A"